

STATUTORY INSTRUMENTS

S.I. No. 268 of 2006

***EUROPEAN COMMUNITIES (QUALITY OF SHELLFISH WATERS)
REGULATIONS 2006***

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European Communities (Quality of Shellfish Waters) Regulations 2006

I, Noel Dempsey, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 79/923/EEC¹ of 30 October 1979 on the quality required of shellfish waters, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Quality of Shellfish Waters) Regulations 2006.

Object of these Regulations

2. The object of these Regulations is to give effect in the State to Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters.

Interpretation

3. (1) In these Regulations—

“Minister” means the Minister for Communications, Marine and Natural Resources;

“prescribed public authority” means a person or body specified in Schedule 1;

“shellfish” means a bivalve or gastropod mollusc;

“shellfish waters” means an area of water specified in Schedule 3;

“Shellfish Waters Directive” means Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters.

¹ OJ No. L 281, 10.11.1979, p. 47

(2) Notes appearing in the text are provided for information only and do not form part of these Regulations.

General duty of public authorities

4. Every public authority that has functions the performance of which may affect shellfish waters shall perform those functions in a manner that will, as far as practicable, promote compliance with the Shellfish Waters Directive and these Regulations and, in particular, shall—

- (a) ensure that, as far as practicable, those shellfish waters comply with the quality standards specified in the Schedule 2, and
- (b) take such action, consistent with the performance of its functions, as will secure compliance with that Directive and these Regulations and with any programme established by the Minister in accordance with Regulation 6, and
- (c) consult, co-operate and liaise with other public authorities and with competent authorities established in Northern Ireland in such a manner and to such extent as is necessary to co-ordinate compliance with these Regulations or that Directive, and
- (d) if any other public authority, or any competent authority established in Northern Ireland, asks for information that it reasonably needs in order to perform its functions with respect to compliance with these Regulations or that Directive, provide the authority with that information.

Minister's responsibilities with respect to sampling of shellfish waters

5. (1) The Minister shall ensure—

- (a) that all shellfish waters comply with Schedule 2 and in particular that sampling of shellfish waters and shellfish flesh is carried out in accordance with the parameters and frequencies specified in that Schedule, and

- (b) records of the results of the sampling are kept for a period of not less than 2 years.

(2) The Minister shall arrange—

- (a) for the results of sampling to be published by electronic means, and
- (b) for the records of the sampling to be kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.

(3) The Minister shall, in consultation with the Environmental Protection Agency, determine on the basis of local environmental conditions—

- (a) each sampling point, and
- (b) the distance from a sampling point to the nearest point at which trade effluent or sewage effluent or polluting matter is discharged to shellfish waters, and
- (c) the depth at which samples are to be taken.

(4) On being satisfied that sampling has produced results that are appreciably better than the standard for a parameter specified in Schedule 2 or 4, the Minister may authorise the frequency of sampling to be reduced.

(5) On being satisfied that the quality of particular shellfish waters will not deteriorate, the Minister may authorise sampling for those waters to be discontinued.

(6) The Minister shall ensure that, as far as practicable, reference methods of analysis or inspection specified in the Schedule 2 are used for establishing the standards for each of the parameters concerned.

(7) The Minister shall ensure that other methods of analysis or inspection are used only if the results obtained are equivalent or comparable to the results obtained by the methods specified in Schedule 2.

Minister to try to ensure that shellfish waters comply with certain quality standards

6. (1) The Minister shall, in consultation with the prescribed public authorities, establish a programme of action in respect of each area of shellfish waters with a view to providing that, as far as reasonably practicable, those waters comply with the Shellfish Waters Directive and these Regulations. In particular, the objective of such a programme must be to take reasonably practicable steps to reduce pollution in those waters with a view to meeting the standards specified in Schedule 4.

(2) When a programme of action is established in accordance with paragraph (1), the Minister shall arrange for the programme to be published by electronic means or by such other means as the Minister considers appropriate.

(3) The Minister shall take all practicable steps to ensure that implementation of a programme of action does not lead, directly or indirectly, to increased pollution of coastal and brackish waters.

What constitutes compliance with Schedules 2 and 4

7. (1) For the purposes of these Regulations, shellfish waters comply with the standards specified in Schedule 2 for any period of 12 months if, during that period—

- (a) in the case of parameter 8 (organohalogenated substances) and parameter 9 (metals) specified in that Schedule, 100 per cent of the samples taken from the same sampling point in accordance with Regulation 5 comply with those standards, and
- (b) in the case of parameter 5 (salinity) and parameter 6 (dissolved oxygen) specified in that Schedule, 95 per cent of the samples taken from the same sampling point in accordance with Regulation 5 comply with those standards, and
- (c) in the case of the other specified parameters specified in that Schedule, 75 per cent of the samples taken from the same sampling point in accordance with Regulation 5 comply with those standards.

This paragraph is subject to paragraphs (3) and (4) and to any departure authorised under paragraph (5).

(2) For the purposes of these Regulations, shellfish waters comply with the standards specified in Schedule 4 for any period of 12 months if, during that period—

- (a) in the case of parameter 8 (organohalogenated substances) and parameter 9 (metals) specified in that Schedule, 100 per cent of the samples taken from the same sampling point in accordance with Regulation 5 comply with those standards, and
- (b) in the case of parameter 5 (salinity) and parameter 6 (dissolved oxygen) specified in that Schedule, 95 per cent of the samples taken from the same sampling point in accordance with Regulation 5 comply with those standards, and
- (c) in the case of the other parameters specified in that Schedule, 75 per cent of the samples taken from the same sampling point in accordance with Regulation 5 comply with those standards.

This paragraph is subject to paragraph (3).

(3) If the sampling frequency is reduced in accordance with Regulation 5(4), the sample taker must ensure that all samples comply with the relevant standard.

(4) Deviations from the standards specified in Schedule 2 are not to be taken into account in determining whether these Regulations are being, or have been, complied with if the deviations are attributable to an event that, in the Minister's opinion, is a natural or man-made disaster.

(5) The Minister may, by notice in writing, authorise a departure from a standard specified in Schedule 2 if, in the Minister's opinion, an exceptional meteorological or geophysical event has occurred. Subject to paragraph (7), such an authorisation has effect for such period, or until such time, as is specified in the notice.

(6) The Minister may impose conditions in authorising a departure from such a standard. Any such conditions have effect for the duration of the notice of authorisation or until such earlier date or time as is specified in that notice.

(7) Contravention of, or failure to comply with, a condition imposed under paragraph (6) terminates the authorisation.

Minister to determine reasons for non-compliance with standards

8. (1) If at any time an area of shellfish waters does not comply with the standards specified in Schedule 2, the Minister shall—

- (a) take all necessary steps to determine the reasons for the non-compliance, and
- (b) in particular, determine whether non-compliance is attributable to chance, natural factors or to discharges of trade effluent, sewage effluent, surface runoff, point or diffuse pollution sources or other polluting matter.

(2) The Minister shall take the required action in consultation with the prescribed public authorities and such other persons as the Minister thinks appropriate.

Certain other Regulations not affected

9. Nothing in these Regulations affects the operation of the Water Quality (Dangerous Substances) Regulations 2001 (S.I. No. 12 of 2001).

Revocation of certain Regulations

10. The Quality of Shellfish Waters Regulations 1994 (S.I. No. 200 of 1994) and the Quality of Shellfish Waters (Amendment) Regulations 2001 (S.I. No. 459 of 2001) are revoked.

SCHEDULE 1

PRESCRIBED PUBLIC AUTHORITIES

The following persons and bodies are prescribed public authorities for the purposes of these Regulations:

- the Minister for Agriculture and Food
- the Minister for Communications, Marine and Natural Resources
- the Minister for the Environment, Heritage and Local Government
- the Minister for Community, Rural and Gaeltacht Affairs
- the Environmental Protection Agency
- relevant local authorities
- relevant regional authorities
- the Marine Institute
- the relevant Regional Fisheries Board
- the Central Fisheries Board

SCHEDULE 2

SHELLFISH WATERS MANDATORY VALUES

<i>Parameter No.</i>	<i>Parameter</i>	<i>Unit of Measurement</i>	<i>Standard/Value</i>	<i>Reference Method of analysis or inspection</i>	<i>Frequency of sampling</i>
1	pH	pH unit	Not less than 7 nor greater than 9	Electrometry	Quarterly Measured in situ at the time of sampling.
2	Temperature	Degrees Celsius		Thermometry	Quarterly Measured in situ at the time of sampling.
3	Coloration (After	Milligrams per	A discharge affecting	Filter through a 0.45	Quarterly

	Filtration)	litre	shellfish waters must not cause the colour of the waters after filtration to deviate by more than 10 milligrams per litre from the colour of waters not so affected.	micrometre membrane. Photometric method, using the platinum/cobalt scale.	
4	Suspended solids	Milligrams per litre	A discharge affecting shellfish waters must not cause the suspended solids content of the waters to exceed by more than 30 per cent the suspended solids content of waters not so affected.	Filtration through a 0.45 micrometre membrane, drying at 105 degrees Celsius and weighing. Centrifuging (for at least 5 minutes, with mean acceleration 2,800 to 3,200g), drying at 105 degrees Celsius and weighing.	Quarterly
5	Salinity	Practical salinity units	(a) less than 40 practical salinity units, and (b) discharges affecting shellfish waters must not cause the salinity of the waters to exceed by more than 10 per cent the salinity of waters not so affected.	Conductimetry	Monthly
6	Dissolved	Saturation per	(a) equal to or greater	Winkler's method or	Monthly, with a

	oxygen	cent	<p>than 70 per cent (average value)</p> <p>(b) no individual measurement to indicate a value less than 60 per cent unless it can be established that there are no harmful consequences for the development of shellfish colonies.</p> <p>Should an individual measurement indicate a value less than 70 per cent, measurements must be repeated.</p>	electrochemical method	<p>minimum of one sample representative of low oxygen conditions on the day of sampling.</p> <p>However, where major daily variations are suspected, a minimum of two samples in one day must be taken.</p>
7	Petroleum hydrocarbons		<p>Hydrocarbons must not be present in the shellfish waters in such quantities as will—</p> <p>(a) produce a visible film on the surface of the water or a deposit on the shellfish, or both, or</p> <p>(b) have harmful effects on the shellfish.</p>	Visual examination	Quarterly
8	Organohalo-			Gas chromatography	Half-yearly

	<p>generated substances</p> <p>Polychlorinated biphenyls</p> <p>Polychlorinated Biphenyls: Sum of ICES 7CBs¹</p>	<p>$\mu\text{g.litre}^{-1}$ (seawater)</p> <p>$\mu\text{g.kilogram}^{-1}$ wet weight @ 1 per cent lipid (shellfish flesh²)</p>	<p>0.30</p> <p>300.00</p> <p>The concentration of each substance in the shellfish water or in the shellfish flesh must not reach or exceed a level, which has harmful effects on the shellfish and their larvae.</p>	<p>after extraction with suitable solvents and purification.</p>	
9	<p>Metals (Dissolved):</p> <p>Arsenic</p> <p>Cadmium</p> <p>Chromium</p> <p>Copper</p> <p>Lead</p> <p>Mercury</p> <p>Nickel</p> <p>Silver</p> <p>Zinc</p>	<p>$\mu\text{g.litre}^{-1}$ (seawater)</p>	<p>40.00</p> <p>5.00</p> <p>30.00</p> <p>10.00</p> <p>20.00</p> <p>0.40</p> <p>50.00</p> <p>10.00</p> <p>200.00</p> <p>The concentration of each substance in the shellfish water must not exceed a level that gives rise to harmful effects on the shellfish</p>	<p>Spectrometry of atomic absorption preceded, when appropriate, by concentration or extraction, or both.</p>	<p>Half-yearly</p>

			and their larvae. The synergic effects of these metals must be taken into consideration.		
10	Faecal coliforms	Number of faecal coliforms per 100 millilitres		Method of dilution with fermentation in liquid substrates in at least three tubes in three dilutions. Subculturing of the positive tubes on a confirmation medium. Count according to MPN (most probable number). Incubation temperature 44°C ± 0.5°C.	Quarterly
11	Substances affecting the taste of shellfish		The concentrations of such substances in shellfish waters or in shellfish flesh must be limited so that the taste of shellfish is not impaired.	Examination of the shellfish by tasting.	If the presence of any of these substances is presumed.

¹ ICES 7 CBs: PCBs 28, 52, 101, 118, 138, 153, 180

² Applies to shellfish flesh of bivalve molluscs

SCHEDULE 3

SHELLFISH WATERS

The following are the shellfish waters to which these Regulations apply:

Mulroy Bay, Co. Donegal	The designated area covers all points due south of an imaginary line between Melmore Head and Ballyhoorisky Point, to the high water mark, as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Killary Harbour, Co. Mayo	The designated area covers the full area of the Harbour below the high water mark from Aasleagh at the head, to Dooneen at the mouth of the harbour, as shown on a map of public record certified by the Minister for the purpose of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Kilkieran Bay, Co. Galway	The designated area is as shown on a map of record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Clarinbridge/Kinvara Bay, Co. Galway	The designated area covers all points East of a line drawn between Kilcolgan Point on Tawin Island, and Eddy Point on island Eddy, and continued on to the Mainland at Doorus, to the high water mark, as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Inner Bantry Bay, Co. Cork	The designated shellfish area of Inner Bantry Bay at the head of the bay covers the area of approximately 1100 hectares, east of an imaginary line due south from

	<p>Ardnamanagh South on the mainland to Whiddy Point East on Whiddy Island, and from Cusroe on Whiddy Island due south to the mainland near Dromclough, to the high water mark, with the exclusion of Bantry Harbour, as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.</p>
Glengarriff Harbour, Co. Cork	<p>The designated area covers all points north of a line drawn between Big Point and the unnamed point south east of Illauncreeveen, and the high water mark, as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.</p>
Roaringwater Bay, Co. Cork	<p>The designated area covers that part of inner Roaringwater Bay that lies east of an imaginary line southeast from a point 1 kilometre east of Coosheen Point on the mainland to the northwest of Castle Island, and from the southeast of Castle Island west to the northwest of Skeam West to Skeam East and on to the westerly point of Cunnamore, north of Coolim and Goose Island, to the high water mark, but not including Ballydehob Bay, as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.</p>
Aughinish Bay, Co. Galway	<p>The designated area is as shown on a map of record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at</p>

	such other place as the Minister has publicly notified.
Cromane, Co. Kerry	The designated area is as shown on a map of record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Inner Bay, Maharees, Co. Kerry	The designated area covers all points south west of an imaginary line from Rough Point, (062 660E 120 150N), to 065 210E 120 150N, to 062 500E 114 240N to the high water mark, as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Kilmakilloge Harbour, Co. Kerry	The designated area covers all points east of an imaginary line from Loughaunacreen point to the most north westerly point of Collorus head to the high water mark (excluding the area south of the road between Lauragh and Ardgroom), as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Carlingford Lough, Co. Louth	The designated area is as is shown on a map of record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Clew Bay (East of Old Head), Co. Mayo	The designated area covers all that area up to the high water mark and east of a line drawn from the most northerly point at Old Head to the most easterly point at

	Gubbaun Point as shown on a map of public record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.
Bannow Bay, Co. Wexford	The designated area is as is shown on a map of record certified by the Minister for the purposes of these Regulations and kept at the head office of the Department of Communications, Marine and Natural Resources or at such other place as the Minister has publicly notified.

SCHEDULE 4

SHELLFISH WATERS GUIDE VALUES

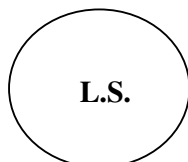
<i>Parameter No.</i>	<i>Parameter</i>	<i>Unit of Measurement</i>	<i>Standard/Value</i>
1	pH	pH unit	
2	Temperature	Degrees Celsius	A discharge affecting shellfish must not cause the temperature of the waters to exceed by more than 2 degrees Celsius the temperatures of waters not so affected.
3	Coloration (after filtration)	Milligrams per litre	
4	Suspended solids	Milligrams per litre	
5	Salinity	Practical salinity units	12 to 38 practical salinity units.

6	Dissolved oxygen	Saturation per cent	Equal to or greater than 80 per cent (average value)
7	Petroleum hydrocarbons		
8	<p>Organohalogenated substances:</p> <p>Polychlorinated biphenyls: Sum of ICES 7CBs¹</p>	<p>$\mu\text{g.kilogram}^{-1}$ wet weight @ 1 per cent lipid (shellfish flesh²)</p>	<p>100.00</p> <p>The concentration of each substance in the shellfish flesh must be so limited that it contributes to the high quality of shellfish products.</p>
9	<p>Metals:</p> <p>Arsenic</p> <p>Cadmium</p> <p>Chromium</p> <p>Copper</p> <p>Lead</p> <p>Mercury</p> <p>Nickel</p> <p>Silver</p> <p>Zinc</p>	<p>Milligrams/ kilogram⁻¹ dry weight (shellfish flesh)</p>	<p>30.00</p> <p>5.00</p> <p>6.00</p> <p>400.00</p> <p>7.50</p> <p>1.00</p> <p>5.00</p> <p>15.00</p> <p>4000.00</p> <p>The concentration of each substance in the shellfish flesh must be so limited that it contributes to the high quality of shellfish products.</p>
10	Faecal coliforms	Number of faecal coliforms per 100 millilitres	Equal to or less than 300 in the shellfish flesh and intervalvular liquid

11	Substances affecting the taste of shellfish		
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¹ ICES 7 CBs: PCBs 28, 52, 101, 118, 138, 153, 180

² Applies to shellfish flesh of bivalve molluscs



GIVEN under my Official Seal,
22 May 2006

Noel Dempsey

Minister for Communications, Marine
and Natural Resources

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations prescribe quality standards for shellfish waters and designate the waters to which they apply, together with sampling and analysis procedures to be used to determine compliance with the standards. The Regulations also require the preparation and implementation of action programmes in respect of all such waters. The Regulations give effect to Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters and replace earlier Statutory Instruments Nos. 200 of 1994 and 459 of 2001.